ANSWERS for Lieutenant-Colonel *James Cuninghame*, To the PETITION of *Nicol Bontine* of *Ardoch*.

THIS Petition, praying your Lordſhips to recal an Inhibition, ſued out by the Reſpondent, as Truſtee in his Daughter's Contract of Marriage, contains a heavy and groundleſs Accuſation againſt the Reſpondent, "That in *October* laſt, making a Viſit to his Daughter at the Petitioner's Houſe of *Ardoch*, took that Opportunity to impoſe upon his Daughter, and to perſuade her to leave her Husband's Houſe in the Country, for ſo frivolous a Reaſon, as, that it would be more agreeable to live at *London* with her Father; and that the Reſpondent, out of Reſentment againſt the Petitioner's refuſing to allow his Daughter to be ſent to her Mother, had uſed this Diligence upon the Contract of Marriage, which is unneceſſary and vexatious, becauſe of the Good Circumſtances of the Petitioner, who, ſays he, is poſſeſſed of an Eſtate of 300 *l. Sterling* of free Rent, and of real and perſonal Securities ſufficient to pay twice as much as he owes; and that he has already, towards Implement of his Contract, acquired Lands, which he has already ſet at 1000 Merks yearly Rent."

Such an Accuſation preferred to your Lordſhips, makes it neceſſary for the Reſpondent, in his own Vindication, to ſet forth the true Motives of his Conduct, which were, That he found himſelf under a Neceſſity, in Compaſſion to his only Child, to bring her away from the Petitioner's Family, where ſhe had ſuffered a long Series of ill Uſage, and that repeated and perſiſted in, after many Promiſes and Vows on the Part of the Petitioner, to amend his Behaviour towards her; and that the Reſpondent found great Reaſon to apprehend, he had been no leſs deceived and miſtaken about the Petitioner's Circumſtances, than his Character and Behaviour as a Husband; That his Condition had been greatly miſrepreſented to the Reſpondent, who therefore thought himſelf entitled and obliged, in Duty to his own Iſſue, and as Truſtee for Execution of his Daughter's Marriage-articles, to take ſuch Precautions as the Law intitled him to, to ſecure the Performance thereof.

It was in *November* 1735, that this unfortunate Marriage was entred into betwixt the Petitioner and the Reſpondent's Daughter, with whom the Reſpondent paid him a Portion of 1000 *l. Sterling*, upon the Petitioner's ſettling an Annuity of 2000 Merks on his Wife, in caſe of her Survivance, and providing his Eſtate of *Ardoch* to the Heir-male of the Marriage; and further, obliging himſelf to have in Readineſs, of his own Money, againſt the Term of *Whitſunday* then next, the Sum of 20,000 Merks; which, with the 18,000 Merks of Tocher, he binds and obliges him to beſtow and employ in purchaſing Lands, or other heritable Subjects, as near as can be conveniently got to the Eſtate of *Ardoch*, and to take the Rights and Securities thereof to himſelf, and the Heirs-male of his Body of this Marriage; and in caſe there ſhould be no Heir-male exiſting of this Marriage at the Petitioner's Death, he obliges him and his Heirs to pay 18,000 Merks to one only Daughter, and a further Sum, in caſe of two or more, at their attaining Majority or Marriage, which of them ſhall firſt happen, with Intereſt from the reſpective Terms of Payment, and from and after the Death of the ſaid *Nicol Bontine*, in caſe he die before the Terms of Payment thereof.

The Reſpondent, beſides the Tocher, beſtowed very liberally upon his Son-in-law, to the Value of ſome Hundred Pounds more, towards enabling him to repair and furniſh his Houſe, where the Reſpondent took it for granted his Daughter was to paſs her Life; and in *March* 1736, he accompanied his Daughter to the Petitioner's Houſe of *Ardoch*, where he ſtayed ſome Days, during which he perceived the Beginnings of uneaſy Behaviour on the Part of the Petitioner, which afterwards increaſed. And on the Reſpondent's returning in *May* following, for the ſecond Time, to *Ardoch*, he found his poor Child almoſt at Death's Door with Grief, at the Uſage ſhe had received during his Abſence; and during his Stay there, was himſelf Witneſs to the Petitioner's treating her with very harſh Language; which the Reſpondent then taking Notice of, the Petitioner made Promiſes and Vows of Amendment: But inſtead of performing theſe, the Petitioner's Behaviour to his Wife became worſe and worſe, and went ſo far, as, upon an very ſlight Occaſion, *to give her a Blow on the Face*, in Preſence of two young Women, who had been aſſiſting her in ſewing a Piece of Work, and were then ſitting with her at a Diſh of Tea. At laſt it came to this, that after grudging to allow the common

mon Neceſſaries and Support to his Family, he even denied her a little Tea to Breakfaſt; inſomuch, that when the Reſpondent went laſt to *Ardoch*, there was not a Grain of Tea in the Houſe, but what the Petitioner had ſent for and borrowed from a neighbouring Gentleman, on Occaſion of the Reſpondent's coming there.

Theſe Circumſtances are mentioned but as a Specimen, to which many more might be added, of the continual Inſtances of Peeviſhneſs, Harſhneſs and Ill-humour with which the Petitioner treated his Wife, many of which the Reſpondent getting Notice of, found himſelf conſtrained, laſt Autumn, to come all the Way from *Plymouth* to the Houſe of *Ardoch*, in order to the Relief of his Child; and upon his Arrival there, in the Beginning of *October*, having enumerated theſe Complaints to the Petitioner, and the Continuance thereof, notwithſtanding his former Promiſes and Vows to the contrary, and ſignified his Reſolution to take his Daughter along with him, the Petitioner, as he himſelf admits, *ſuffered her to go where ſhe inclined without Reſiſtance*; and, in Fact, the Petitioner conducted her to her Horſe, and ſent his Servants and Horſes to attend her, and carry her Baggage to *Glaſgow*; and thus, by his own ſhowing, a voluntary Separation was made at that Time, which the Reſpondent doubts not, the Petitioner the more readily came into, that no ſeparate Aliment or Allowance for Maintenance of his Wife was then demanded of him, ſo that her going with her Father, delivered him from any Expence upon her Account.

It was therefore merely the Senſe and Belief of Mris. *Bontine*'s unhappy Circumſtances at Home, that moved the Reſpondent to bring her away with him from her Huſband's Houſe, and that made her willing to leave it, notwithſtanding that her Daughter was ſtill there, and not upon ſo ridiculous an Account as the Petitioner has taken upon him to aver: It could never have entered into the Reſpondent's Head to propoſe, or his Daughter's to conſent, that ſhe ſhould leave her Husband and Child, on the Proſpect of living more agreeably at *London*, if ſhe had not found herſelf, by repeated Experience, in ſuch unhappy Circumſtances at Home, that her Life there was no longer ſupportable; and the Reſpondent has mentioned ſo much of the true Cauſe of his bringing away his Daughter moſt unwillingly, but at the ſame Time neceſſarily, to vindicate himſelf from the groſs Miſrepreſentation of that Matter, which the Petitioner has been pleaſed to ſet forth in his Bill.

As to the Condition of the Petitioner's Eſtate, the Reſpondent cannot aver any Thing with Certainty, unleſs the Petitioner would fairly exhibite to him a State of his Debts and Effects; but, according to the Reſpondent's beſt Information and Enquiry, the Petitioner's Condition is very different from what it was repreſented to the Reſpondent, the Land-Eſtate which the Petitioner calls 300 *l. Sterl. per annum* free, does not exceed 4000 Merks a Year, and out of this he had very conſiderable Debts of his Uncle to pay, for anſwering which the Reſpondent was made to believe, that the Petitioner had a large ſeparate Fund, conſiſting of Bonds owing to him by a neighbouring Gentleman, for whom his Uncle had acted ſome Years as Factor, for no leſs than 1500 *l. Ster.* But upon the beſt Enquiry, and credible Information, there is little or nothing due to the Petitioner from that Quarter, but rather, on the contrary, a Balance reſting by him; and if that be the Caſe, the exhibiting this apparent large Fund to the Reſpondent, was a mere Impoſition, to make him believe, that the 38000 Merks, conſiſting of the Wife's Tocher, and 20000 Merks of the Petitioner's own Money, might be fully and freely applied towards the making a new Purchaſe to be provided to the Heir of the Marriage; but inſtead of this, tho' ſo many Years are elapſed ſince the Marriage, this 38000 Merks has never been laid out or imployed in Terms of the Contract.

For as to what is ſaid in the Petition, That he has already acquired Lands, which he has ſet in Tack for 19 Years at 1000 Merks yearly Rent; *firſt* of all, It is not averred in the Petition itſelf, that the Price of this Land has been *paid* by him; and, ſo far as the Reſpondent can learn, in Fact, every Shilling of the Price is either all reſting, or has been paid by Monies borrowed on Purpoſe, whereof 6000 Merks was at the laſt *Whitſunday* borrowed from *Bayne* in *Cardroſs*. And farther, that what is ſaid to be ſet at 1000 Merks a Year, conſiſts partly of a Parcel of the Petitioner's other Lands, that are ſet jointly with this new Purchaſe: For as the *total Price* was but 15000 Merks, it muſt have been a very good Bargain, if that yields 1000 Merks *per annum*.

And if ſuch be the true State of that Purchaſe, it muſt appear to be a very fallacious Repreſentation that is made by the Petitioner, that he has already acquired Lands to the Value of 1000 Merks yearly Rent, towards Implement of this Article of his Contract, from which any one would underſtand, that he had imployed the greater Part of the 38000 Merks, or probably 25000 Merks thereof of his own Money, and what he received in Tocher, inſtead of which 15000 Merks *only* is laid out, and even that made up with

with borrowed Money; and it is not even ſaid, that the Purchaſe thus made, has been taken in Terms of the Contract of Marriage.

Another Fact that convinc'd the Reſpondent, that the Petitioner's Condition was far from being ſuch as he pretends, was, that he is owing Money to many People that the Reſpondent can condeſcend on, has of late been borowing Money at every Hand; nay, his Credit is ſo low, that he has been under Caption theſe three or four Months paſt, for a Debt of 15 or 16 *l.* to Mr. *Innes* in the Receiver-general's Office.

Upon theſe Informations and Appearances, the Reſpondent was induc'd to conclude the Petitioner's Condition was far from being good; and that the Reſpondent was therefore intitled and obliged to uſe all the Precautions competent by Law, for ſecuring what is or may be due and payable to his Iſſue; and for that Reaſon preferred to your Lordſhips the Bill of Inhibition founded on the Contract of Marriage, which was paſt and executed, and without any Precipitation was regiſtred only a few Days before the Elapſe of the Time limited by Law for that Purpoſe; the Bill and Diligence recites the whole Proviſions in the Contract of Marriage, and if any of theſe be already effectually and fully performed, it is more than what hitherto your Petitioner has taken the Trouble to give the Reſpondent Satisfaction, that it was ſo done: For Inſtance, the Infeftment ſaid to be taken for his Wife's Annuity, ought to have been delivered to the Reſpondent, to be kept for her Uſe; and though the Eſtate is diſponed to the Heirs of the Marriage by the Contract, the Petitioner is thereby further obliged to expede an Infeftment in the Terms of that Settlement, whereby theſe Heirs may become Heirs of an Inveſtiture, and not of a mere perſonal or incompleat Right.

The next Article is an Obligation, whereof the Term of Performance has been ſeveral Years paſt, *viz.* to imploy the Sum of 38000 Merks on a Purchaſe of heritable Subjects, and to take the Rights thereof in Terms of the Contract; and concerning Obligations of this Kind, the Lord *Stair*, in the Paſſage quoted for the Petitioner, ſays, "That when the Husband is obliged to imploy a Tocher, and ſo much of his "own, upon Land or Annualrent, if the Husband be a *trading Merchant*, Inhibiti-"on ſhould not paſs thereon, except the Husband be *vergens ad inopiam*, or "do not providently follow Trading;" which appears to infer the Author's Opinion, That, in the Caſe of a Husband like this Petitioner, who is no trading Merchant, ſuch an Obligation is the proper Ground of an Inhibition, even without the Addition of Circumſtances creating a juſt Suſpicion, ſuch as, the Reſpondent apprehends, occur in the preſent Caſe.

And as for the laſt Article of the Proviſions to the Daughters, it is very true, that theſe are conditional, and likewiſe the Term of Payment diſtant; but upon the Exiſtence of the Condition, and Arrival of the Term, the Daughter may become a proper Creditor to the Petitioner in his own Lifetime, and it appeared to the Reſpondent, that a Claim of this Kind, which is not intitled to immediate Exaction, has more, than any other, Need to be ſecured by Way of Precaution, againſt the future Contractions or Alienations of the Debitor.

But if it ſhall appear to your Lordſhips, concerning any of the Proviſions in this Contract, that the ſame are not the proper Ground for giving this Remedy or Precaution of Inhibition for the Security of the Creditor, or that being once granted or paſſed by your Lordſhips, the ſame ought yet to be recalled, the Reſpondent muſt ſubmit to your Lordſhips Judgment in the ſecond Inſtance, as well as he did in the firſt, when he preſented his Bill of Inhibition, which fairly ſets forth the Terms of the Contract: But before your Lordſhips ſhall give any Deliverance on this Petition, he humbly hopes, that the Facts therein alledged for the Petitioner, relating to the Circumſtances of his Eſtate, and of the Purchaſe by him lately made, and of the Securities, he ſays, he is poſſeſſed of, ſufficient to pay more than he owes, which he declares himſelf ready to ſhow, ſhall firſt of all be inquir'd into, to the End it may appear, whether the Petitioner's Repreſentation of his own Condition, or the Apprehenſions of the Reſpondent, founded upon the contrary Information that he has received, of the Petitioner's many Contractions of Debt, and extreme Diligence taken out for a ſmall Sum againſt him, be the juſt and true State of the Petitioner's Caſe.

In Reſpect whereof, &c.

WILLIAM GRANT.

A Copy of this Anſwer was given to *Ardoch*'s Doer, upon *Friday* laſt, in Obedience to your Lordſhips Interlocutor.

I found the Petitioner ought to Make an Enquiry of the Sheriff
& Creditor prima facie in order to know whether the Respondent
the right of the Sheriff's Possession & the Respondent an Person
to suspect. And in the meantime allowed a proof of facts
& circumstances that may either Discover Fraud to either
Reserves the Consideration of the Enquiry & Ordering the
& Grants Allegiance) Signed for Presence

Archd. Mellis

21 June
1752

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